



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 5841-00
21 November 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LTCOL [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 24 Aug 00 w/attachments
(2) BCNR files for Subject's prior cases (4199-96 and 4195-99)
(3) HQMC MMOA-4 memo dtd 6 Nov 00
(4) HQMC MMPR memo dtd 31 Oct 00
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show the lineal position, date of rank, and effective date in the grade of lieutenant colonel he would have been assigned had he been selected for promotion to that grade by the Fiscal Year (FY) 1999 Lieutenant Colonel Selection Board, vice the FY 2001 Lieutenant Colonel Selection Board. He specifically requested a date of rank and effective date of "1998."

2. The Board, consisting of Messrs. Frankfurt and Pfeiffer and Ms. Newman, reviewed Petitioner's allegations of error and injustice on 16 November 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (2) reflects that in Petitioner's second prior case before this Board, a reconsideration, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) directed removing his fitness report for 18 April to 20 June 1990; and this Board removed his failures by the FY 1999 and 2000 Lieutenant Colonel Selection Boards. Enclosure (2) further shows that in his initial case, he did not apply for correction of his

record until 12 February 1996, but his application stated that he did not discover the injustice until June 1994.

c. In correspondence attached as enclosure (3), the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), the office with cognizance over the subject matter of this case, has commented to the effect that Petitioner's request has merit and warrants favorable action.

d. In correspondence attached as enclosure (4), the HQMC Promotion Branch (MMPR) recommended denial on the grounds that Petitioner did not demonstrate reasonable diligence to ensure his record was substantially complete and accurate before his promotion board met. They stated that he would have received the date of rank and effective date of 1 July 1998, had he been promoted pursuant to selection by the FY 1999 Lieutenant Colonel Selection Board. His current lieutenant colonel date of rank and effective date is 1 June 2000.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the requested relief.

The Board concurs with the MMOA-4 advisory opinion at enclosure (3) in finding that Petitioner's request has merit and warrants favorable action. In light of the information provided by MMPR at enclosure (4), they find the date to which his date of rank and effective date should be adjusted is 1 July 1998. Contrary to the MMPR opinion, they find his not having acted sooner to pursue correcting his fitness report record is an insufficient basis to deny his otherwise meritorious request, particularly considering the date he says he discovered the injustice in his case.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

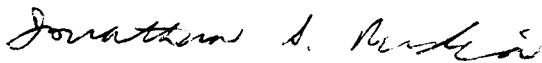
a. That Petitioner's naval record be corrected, where appropriate, to show his date of rank and effective date in the grade of lieutenant colonel as 1 July 1998, rather than 1 June 2000; and that his lineal precedence be adjusted accordingly.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1600
MMOA-4
6 Nov 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR [REDACTED]
[REDACTED] USMC

Ref: (a) MMR Request for Advisory Opinion in the case of
Lieutenant Colonel [REDACTED]
USMC of 26 Oct 00

1. Recommend approval of Lieutenant Colonel [REDACTED]'s request for backdating his Date of Rank (DOR). This recommendation gives Lieutenant Colonel [REDACTED] benefit of the doubt.

2. Per the reference, we reviewed Lieutenant Colonel [REDACTED]'s record and petition. He failed selection on the FY99 and FY00 USMC Lieutenant Colonel Selection Boards. Subsequently, he successfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Temporary Duty fitness report of 900418 to 9900620 and was selected for promotion. Lieutenant Colonel [REDACTED] requests backdating his DOR.

3. In our opinion, removal of the contested fitness report enhanced the competitiveness of the record. While we recognize the record retains other jeopardy, we believe Lieutenant Colonel [REDACTED] should be afforded the benefit of the doubt and have his DOR backdated.

4. Point of Contact is [REDACTED]

[REDACTED]

Lieutenant Colonel, U.S. Marine Corps
Officer Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

5841-00
IN REPLY REFER TO:
1412/2
MMPR
OCT 31 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF LIEUTENANT COLONEL [REDACTED]
[REDACTED] USMC

Ref: (a) MMR Route Sheet of 26 Oct 00

1. Reference (a) requested an advisory opinion in the case of Lieutenant Colonel [REDACTED]. Lieutenant Colonel [REDACTED] requesting a back date of rank to the date he would have been promoted if selected from the FY99 USMC Colonel Promotion Selection Board.
2. The following facts are germane to this case:
 - a. Lieutenant Colonel [REDACTED] was considered and not selected as an in zone officer by the FY99 and as an above zone officer on the FY00 USMC Colonel Promotion Selection Boards, which convened 970929 and 981005 respectively.
 - b. Lieutenant Colonel [REDACTED] petitioned to have his fitness report 900418 to 900620 and his failures of selection removed from his record on 990624. The fitness report was removed by the Performance Evaluation Review Board on 990928. The failures of selection were removed by BCNR on 991006.
 - c. Lieutenant Colonel [REDACTED] was subsequently considered and selected as an in zone officer by the FY01 USMC Colonel Promotion Selection Board, which convened 9910204. He was promoted to colonel on 000601.
 - d. The subject fitness report was over five years old when he first attempted to have it removed 960212. Lieutenant Colonel [REDACTED] made no further attempt to have it removed until 990624. In fact, he did not get his record corrected until after the report was nine years old and he had twice failed of selection. Based on this, we believe Lieutenant Colonel [REDACTED] not demonstrate reasonable diligence to ensure his record was substantially complete and accurate prior to the date the original boards convened.

Subj: BCNR APPLICATION IN THE CASE OF LIEUTENANT COLONEL [REDACTED]
[REDACTED] GMC

3. Promotion Branch recommends disapproving Lieutenant Colonel [REDACTED] request for a back date of rank. If approved, his date of rank would be 980701.

4. The point of contact in this matter is Captain [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Head, Officer Promotion Section